IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 9574 OF 2003**

Dnyneshwar Trimbak Shitole & Anr..... Petitioners.

Versus

Smt.Parvatibai Narayan Shitole
& others. ... ... .....Respondents.

Mr. P. N. Karlekar for the Petitioners.

Mr. K. K. Waghmare for Respondent No.1.

**CORAM : S. A. BOBDE, J.**

**DATED : 21ST MARCH, 2005.**

**P.C.:**

Rule.

2. Learned Counsel appearing for respondent No.1, who is the main contesting party, waives service of rule. By consent, rule made returnable forthwith and taken up for final disposal.

3. The petitioners have challenged the order of the trial court refusing to take their written statement on record. Primarily the trial court has refused to

do so in view of the Code of Civil Procedure Amendment Act, 2002 which came into force on 1st July, 2002. This act, as has been held by this court, is not applicable to pending proceedings in the matter of written statement vide judgment in the case of **Jerry Alex Braganza @ Jeromino Oriculo Alex Braganza & anr. v/s Rajeshree @ Rayeshri Ramdas Borkar,** 2003 (4) Mh.L.J. 1034. In this view of the matter, the impugned order is hereby set aside.

4. In the peculiar facts and circumstances of this case, the petitioners shall be allowed to file their written statement before the trial court subject to payment of costs in the sum of Rs.2,500/- to the plaintiff.

5. Rule made absolute in the above terms. This writ petition is, accordingly, disposed of.

6. There shall be no order as to costs.

Sd/-

(**S. A. BOBDE, J.**)